

affirmation of fact or a written promise of a specified level of performance must relate to a specified period of time in order to be considered a “written warranty.”<sup>1</sup> A product information disclosure without a specified time period to which the disclosure relates is therefore not a written warranty. In addition, section 111(d) exempts from the Act (except section 102(c)) any written warranty the making or content of which is required by federal law. The Commission encourages the disclosure of product information which is not deceptive and which may benefit consumers, and will not construe the Act to impede information disclosure in product advertising or labeling.

(b) Certain terms, or conditions, of sale of a consumer product may not be “written warranties” as that term is defined in section 101(6), and should not be offered or described in a manner that may deceive consumers as to their enforceability under the Act. For example, a seller of consumer products may give consumers an unconditional right to revoke acceptance of goods within a certain number of days after delivery without regard to defects or failure to meet a specified level of performance. Or a seller may permit consumers to return products for any reason for credit toward purchase of another item. Such terms of sale taken alone are not written warranties under the Act. Therefore, suppliers should avoid any characterization of such terms of sale as warranties. The use of such terms as “free trial period” and “trade-in credit policy” in this regard would be appropriate. Furthermore, such terms of sale should be stated separately from any written warranty. Of course, the offering and performance of such terms of sale remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(c) The Magnuson-Moss Warranty Act generally applies to written warranties covering consumer products. Many consumer products are covered by warranties which are neither in-

tended for, nor enforceable by, consumers. A common example is a warranty given by a component supplier to a manufacturer of consumer products. (The manufacturer may, in turn, warrant these components to consumers.) The component supplier's warranty is generally given solely to the product manufacturer, and is neither intended to be conveyed to the consumer nor brought to the consumer's attention in connection with the sale. Such warranties are not subject to the Act, since a written warranty under section 101(6) of the Act must become “part of the basis of the bargain between a supplier and a buyer for purposes other than resale.” However, the Act applies to a component supplier's warranty in writing which is given to the consumer. An example is a supplier's written warranty to the consumer covering a refrigerator that is sold installed in a boat or recreational vehicle. The supplier of the refrigerator relies on the boat or vehicle assembler to convey the written agreement to the consumer. In this case, the supplier's written warranty is to a consumer, and is covered by the Act.

#### **§ 700.4 Parties “actually making” a written warranty.**

Section 110(f) of the Act provides that only the supplier “actually making” a written warranty is liable for purposes of FTC and private enforcement of the Act. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor is not liable for failure of the written warranty to comply with the Act or rules thereunder. However, other actions and written and oral representations of such a supplier in connection with the offer or sale of a warranted product may obligate that supplier under the Act. If under State law the supplier is deemed to have “adopted” the written affirmation of fact, promise, or undertaking, the supplier is also obligated under the Act. Suppliers are advised to consult State law to determine those actions and representations which may

<sup>1</sup>A “written warranty” is also created by a written affirmation of fact or a written promise that the product is defect free, or by a written undertaking of remedial action within the meaning of section 101(6)(B).

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make them co-warrantors, and therefore obligated under the warranty of the other person or business.

### § 700.5 Expressions of general policy.

(a) Under section 103(b), statements or representations of general policy concerning customer satisfaction which are not subject to any specific limitation need not be designated as full or limited warranties, and are exempt from the requirements of sections 102, 103, and 104 of the Act and rules thereunder. However, such statements remain subject to the enforcement provisions of section 110 of the Act, and to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(b) The section 103(b) exemption applies only to general policies, not to those which are limited to specific consumer products manufactured or sold by the supplier offering such a policy. In addition, to qualify for an exemption under section 103(b) such policies may not be subject to any specific limitations. For example, policies which have an express limitation of duration or a limitation of the amount to be refunded are not exempted. This does not preclude the imposition of reasonable limitations based on the circumstances in each instance a consumer seeks to invoke such an agreement. For instance, a warrantor may refuse to honor such an expression of policy where a consumer has used a product for 10 years without previously expressing any dissatisfaction with the product. Such a refusal would not be a specific limitation under this provision.

### § 700.6 Designation of warranties.

(a) Section 103 of the Act provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than \$10, excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty". Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive des-

ignations permitted under the Act, unless a specific exception is created by rule.

(b) Section 104(b)(4) states that "the duties under subsection (a) (of section 104) extend from the warrantor to each person who is a consumer with respect to the consumer product." Section 101(3) defines a consumer as "a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product. \* \* \*." Therefore, a full warranty may not expressly restrict the warranty rights of a transferee during its stated duration. However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off as there is no transfer of ownership "during the duration of (any) warranty." Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car." Because this type of warranty leads the consumer to believe that proof of purchase is not needed so long as he or she owns the product a duty to furnish documentary proof may not be reasonably imposed on the consumer under this type of warranty. The burden is on the warrantor to prove that a particular claimant under this type of warranty is not the original purchaser or owner of the product. Warrantors or their designated agents may, however, ask consumers to state or affirm that they are the first purchaser of the product.

### § 700.7 Use of warranty registration cards.

(a) Under section 104(b)(1) of the Act a warrantor offering a full warranty may not impose on consumers any duty other than notification of a defect as a condition of securing remedy of